

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

THE NATIONAL FEDERATION OF)
THE BLIND, et al.)
)
Plaintiffs,)
) Civil Action No. 18-01568 (TDC)
v.)
)
UNITED STATES DEPARTMENT OF)
EDUCATION, et al.)
)
Defendants.)

JOINT STATUS REPORT

Pursuant to this Court’s October 1, 2018 Order, *see* Order, ECF No. 26 (Oct. 1, 2018), Plaintiffs, the National Federation of the Blind, the Council of Parent Attorneys and Advocates, Inc., and the National Association for the Advancement of Colored People (“Plaintiffs”), and Defendants, the United States Department of Education (“ED”), Betsy DeVos, in her official capacity as Secretary of ED, and Kenneth L. Marcus, in his official capacity of Assistant Secretary for Civil Rights¹ (collectively, “ED”) respectfully submit this Joint Status Report to inform the Court about the status of the parties’ ongoing efforts to resolve this matter outside of litigation and request additional time to continue these discussions. In support of this request, the parties state the following:

1. On May 31, 2018, Plaintiffs filed this action against ED, challenging the agency’s decision to amend and/or modify certain provisions of its Case Processing Manual

¹ Pursuant to Rule 25(d), Kenneth L. Marcus, in his official capacity as Assistant Secretary for Civil Rights, is substituted for Acting Assistant Secretary for Civil Rights, Candice Jackson.

(“CPM”) as published on March 5, 2018. *See generally* Compl., ECF No. 1. Specifically, the two CPM provisions that are the focus of Plaintiffs’ Complaint are (1) section 108(t), which is one of several grounds pursuant to which the Office for Civil Rights (“OCR”) dismisses complaints submitted to OCR, and (2) the removal of the appeals procedures set forth in prior publications of the CPM.

2. Defendant asserts that, on May 9, 2018, prior to the filing of Plaintiffs’ Complaint, OCR ceased using section 108(t) as a basis for dismissing complaints. *See* Defs.’ Second Consent Mot. for Extension of Time ¶ 4, ECF No. 22 (Aug. 23, 2018).² Between March 5, 2018, and May 9, 2018, the vast majority of the complaints that OCR dismissed pursuant to section 108(t) were filed by one individual alleging web accessibility issues for individuals with disabilities. *See id.*

3. Plaintiffs assert that ED has not announced its decision to cease using section 108(t) as a basis for dismissing complaints publicly, it is not clear that such a policy has been announced internally, and the Case Processing Manual, including section 108(t), remains in effect and has been used as a basis for dismissing complaints under section 108(k), because a similar complaint was previously dismissed under section 108(t) at least as recently at June 11, 2018.

4. Between May and June 2018, OCR held three webinars on web accessibility to assist schools, districts, state educational agencies, libraries, colleges, and universities in

² In addition, OCR dismissed three complaints under 108(k) because a previous complaint had been dismissed under section 108(t). Section 108(k) of the CPM provides that OCR will dismiss a “complaint filed by the complainant or someone other than the complainant against the same recipient [if the complaint] raises the same or similar allegation(s) based on the same operative facts that [were] previously dismissed by OCR pursuant to subsections 108(a), (e), (g)(ii), (i), (l), (n), (r), (s), (t), or (u).” One of these 108(k) dismissals occurred on June 11, 2018, after OCR ceased using section 108(t) as a grounds for dismissal.

making their websites and online programs accessible to individuals with disabilities. *See id.* ¶ 5. The three webinars addressed many of the issues raised in the complaints dismissed under section 108(t), including recipient design decisions that make their online programs, services, and activities inaccessible to individuals with disabilities. *Id.* Approximately 2100 recipients participated in the three webinars hosted by OCR. *Id.*

5. On June 7, 2018, after the filing of the Complaint in this matter, the United States Senate confirmed Kenneth L. Marcus as Assistant Secretary for Civil Rights. *See id.* ¶ 3. Defendants assert that Assistant Secretary Marcus intends to revise the March 5, 2018 CPM. *See id.* Among the revisions that he has told this Court that he intends to make are (1) the deletion of section 108(t), and (2) establishing a new appeals process. *See id.*

6. On August 29, 2018, this Court held a status conference to discuss, among other things, Plaintiffs' letter motion requesting the Court's permission to file a preliminary injunction motion. During the August 29, 2018 status conference, the parties requested, and the Court agreed, to provide the parties additional time to determine whether they are able to resolve this matter outside of litigation. On October 1, 2018, the Court issued an Order that, *inter alia*, directed the parties to file a Joint Status Report informing the Court of the status of the parties' efforts to resolve this matter outside of litigation on or before November 5, 2018. *See* Order at 2.

7. The parties submit this status report to inform the Court that, through their counsel, they have had productive discussions in an effort to resolve this matter outside of litigation and request two additional weeks, *i.e.*, until November 19, 2018, to continue their discussions. The parties believe that with the two additional weeks to continue these discussions, the parties may be able to establish a mechanism with which to resolve this

matter outside of litigation or, at least will substantially narrow the issues that remain to be litigated.

8. Accordingly, the parties respectfully request that the Court grant the parties until November 19, 2018, to continue their efforts to resolve this matter outside of litigation, or substantially narrow the issues that remain to be litigated.

A proposed order is attached to this Joint Status Report.

Dated: November 5, 2018

Respectfully submitted,

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